

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RAY LIVINGSON LEE,

Petitioner,

Case No. 1:22-cv-11869

v.

Honorable Thomas L. Ludington
United States District Judge

GARY MINIARD,

Respondent.

/

**ORDER (1) DENYING PETITIONER'S APPLICATION TO PROCEED IN FORMA
PAUPERIS, (2) DISMISSING WITHOUT PREJUDICE PETITIONER'S HABEAS
PETITION, (3) DENYING AS MOOT PETITIONER'S MOTION FOR APPOINTMENT
OF COUNSEL, AND (4) DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Ray Livingston Lee submitted a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, an application to proceed *in forma pauperis*, and a motion for appointment of counsel. ECF Nos. 1; 2; 3.

Petitioner has \$401.01 in his prison account as of August 3, 2022. ECF No. 2 at PageID.51. He has therefore not established indigence, as he can pay the \$5.00 filing fee for this action. Accordingly, his application to proceed *in forma pauperis* will be denied. ECF No.2.

This Court must dismiss the petition because the allegation of poverty is untrue. *See* 28 U.S.C. § 1915(e)(2)(A). Accordingly, Petitioner's petition for a writ of habeas corpus, ECF No. 1, will be dismissed without prejudice, and his motion to appoint counsel, ECF No. 3, will therefore be denied as moot.

Petitioner will not receive a certificate of appealability. Before Petitioner may appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); FED. R. APP. P. 22(b). A certificate of appealability may issue only if the petitioner makes "a substantial showing of the

denial of a constitutional right.” *Id.* § 2253(c)(2). Petitioner has not made such a showing. If a court denies relief on procedural grounds, then a certificate of appealability should issue if jurists of reason could debate not only whether the petitioner stated a valid claim of the denial of a constitutional right but also whether the court’s procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000). Jurists of reason would not find this Court’s procedural ruling debatable. Accordingly, a certificate of appealability will be denied.

Accordingly, it is **ORDERED** that Petitioner’s Application to Proceed in Forma Pauperis, ECF No. 2, is **DENIED**.

Further, it is **ORDERED** that Petitioner’s Writ of Habeas Corpus, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**.

Further, it is **ORDERED** that Petitioner’s Motion to Appoint Counsel, ECF No. 3, is **DENIED AS MOOT**.

Further, it is **ORDERED** that a Certificate of Appealability is **DENIED**.

Dated: August 30, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge